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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/943,086	08/31/2001	Alan Asay	P 268225 RM-1	8118
909	7590	07/18/2006	EXAMINER	
PILLSBURY WINTHROP SHAW PITTMAN, LLP			CALLAHAN, PAUL E	
P.O. BOX 10500			ART UNIT	
MCLEAN, VA 22102			PAPER NUMBER	
			2137	

DATE MAILED: 07/18/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action Before the Filing of an Appeal Brief	Application No. 09/943,086	Applicant(s) ASAY ET AL.	
	Examiner Paul Callahan	Art Unit 2137	

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 19 June 2006 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: _____.
Claim(s) objected to: 62.
Claim(s) rejected: 1, 57-61 and 63-75.
Claim(s) withdrawn from consideration: _____.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☐ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: _____.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). _____
13. ☒ Other: See Continuation Sheet.


EMMANUEL L. MOISE
 SUPERVISORY PATENT EXAMINER

Continuation of 13. Other:

The rejections of claims 63-75 under 35 USC 101 are overcome by the changes made to the language of the claims in the after-final amendment.

The rejections under 35 USC 102(a) of Claims 1, 57-61, and 63-75 remain as set forth in the previous (final) Office Action in the case.

The Applicant argues in traverse of the rejection of claim 1 under 35 USC 102(a) as anticipated by Williams '657, by asserting that Williams fails to teach the limitation of: "obtaining electronic signals representing a request for transactional assurance based on a transaction involving a subscriber." Yet a review of Williams indicates that such is indeed taught at the cited portions of the reference. The Applicant asserts that the teachings of Williams may be distinguished from the claimed invention of claim 1 because it is the merchant of Williams making the request for assurance and not a customer. The Examiner counters that there is no limitation recited in claim 1 that specifies where a request for assurance must come from. The Applicant is basing this argument on an overly narrow interpretation of the term "assurance." As a term of art in financial transactions for example, "assurance" may be requested by a vendor that a customer has sufficient funds, or assurance may be sought that a customer is willing to complete a transaction by authorizing payment from a third party to the vendor. Williams '657 teaches a request for assurance by virtue of teaching the request, made by a merchant, for a customer to authorize payment (fig. 30, col. 11 lines 30-37, col. 36 lines 63-67, col. 37 lines 1-12, and especially col. 13 line 40 through col. 14 line 23).

The Applicant asserts that Williams fails to teach the claim limitation of: "...determining whether to provide the requested transactional assurance based on at least the subscriber assurance", and, depending on the determining, issuing electronic signals representing transactional assurance to a relying party." The Examiner counters by noting that the Payment manager of Williams makes a determination as to whether customer "assurance" has been received by virtue of determining whether the customer indicates authorization to make payment to a merchant (see particularly: fig. 5 elements 572, 574, 575, col. 16 lines 35-65, and fig. 6 elements 634, 640, 650).

The Applicant asserts that Williams fails to teach issuance of an assurance to a "relying party." Yet a review of Williams shows that such is taught when authorization is sent to a merchant's system (col. 16 lines 50-60). A merchant constitutes a "relying" party.

The Applicant argues that the claimed invention set forth in claim 1 may be distinguished from the teachings of Williams '657 since Williams fails to teach the payment manager making a determination as to the validity of the authorization issued by the customer. The Applicant asserts that the teaching of Williams therefore cannot read on the "determining" step of claim 1. However no such authentication step or check for validity is set forth by claim 1. Claim 1 only recites the limitation of: "determining whether to provide the requested transactional assurance based on at least the subscriber assurance". The teaching of Williams (col. 13 line 40 through col. 14 line 23) does read on this step since the payment manager of Williams does make a determination as to whether authorization has been received. No check for "validity" of an assurance by authenticating the communication is recited by claim 1.

The balance of the Applicant's arguments rely on those regarding Claim 1 to assert the patentability of claims 57-61 and 63-75. The arguments are not persuasive based on the discussion presented supra regarding Claim 1.

Paul Callahan

7-5-06

